

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION
CRIMINAL CASE NO. 1:08-cr-00016-MR**

UNITED STATES OF AMERICA,)

Plaintiff,)

VS.

MATTHEW JAMES DURY,

Defendant.)

ORDER

THIS MATTER is before the Court upon the *pro se* Defendant's "Motion for Reduction of Sentence Pursuant to the First Step Act 2018" [Doc. 140].

The Defendant is serving a 204-month sentence for his conviction for receiving child pornography in violation of 18 U.S.C. §§ 2552(a)(2) and (b)(1). [Doc. 30]. The Defendant now moves for a reduction of his sentence pursuant to the First Step Act of 2018. [Doc. 140].

The First Step Act of 2018, Pub. L. 115-135, was signed into law on December 21, 2018. Section 404 of the Act gives retroactive effect to the changes made by Sections 2 and 3 of the Fair Sentencing Act of 2010. Section 404(a) defines a “covered offense” as “a violation of a Federal

criminal statute, the statutory penalties for which were modified by Section 2 or 3 of the Fair Sentencing Act of 2010 (Public Law 111-220; 124 Stat. 2372), that was committed before August 3, 2010.” Sections 2 and 3 of the Fair Sentencing Act of 2010 increased the quantity of cocaine base required to trigger the enhanced penalties of 21 U.S.C. § 841 and eliminated the mandatory minimum for simple possession of cocaine base under 21 U.S.C. § 844(a).

Here, the Defendant was convicted of receiving child pornography. The Defendant is not eligible for relief under Section 404 of the First Step Act because he was not convicted of a “covered offense” under Section 404(a)’s definition.

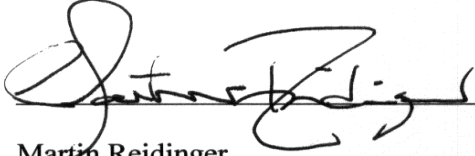
To the extent that the Defendant is seeking relief under Section 603 of the First Step Act, his motion is also denied. Section 603 of the Act modifies 18 U.S.C. § 3582(c)(1) to allow a defendant, not just the Director of the Bureau of Prisons, to file a motion for compassionate release. The Defendant, however, has not stated any grounds for a reduction of sentence under § 3582(c)(1), nor has he alleged that he has fully exhausted his administrative remedies with respect to any such request.

For all these reasons, the Defendant’s motion must be denied.

IT IS, THEREFORE, ORDERED that the *pro se* Defendant's "Motion for Reduction of Sentence Pursuant to the First Step Act 2018" [Doc. 140] is **DENIED.**

IT IS SO ORDERED.

Signed: February 14, 2019


Martin Reidinger
United States District Judge

